proper order for costs should be costs as assessed on the subordinate courts scale.

Judgment for the plaintiff.

Solicitors: *Dharmananda & Co.; A. Mahendran.*

SELCO (SINGAPORE) LTD. v. JEAN DELPORTE

[F.C. (Chua, Kulasekaram & Choor Singh JJ.) May 28, 1969]

[Singapore—Federal Court Civil Appeal No. Y2 of 1969]

Practice and Procedure — Security for costs — Order extending time for furnishing of such security — Jurisdiction of court to extend time — Whether defendants deprived of right to have action dismissed — R.S.C. 1934, O. LI r. 2(2) and O. LXII r. 5(2).

The respondent who resided in Belgium commenced legal proceedings against the appellants. The appellants applied for and obtained an order requiring him to pay the sum of $1,000 into court as security for costs within three weeks from 22nd November, 1968. The respondent made an application for the security for costs to be given by way of guarantee. The application was made before the expiry of the time within which the security had to be furnisned, but it was heard after such time. It was dismissed. The respondent was given one week to comply with the order of the 22nd November, 1968. The appellants appealed against that part of the order extending the time for security of costs to be furnished on the ground that it deprived them of their right to make an application under R.S.C., O. LXII r. 5(2) for the action to be dismissed by reason of the respondent's default in furnishing the security within the prescribed time.

Held, dismissing the appeal: (1) a judge making an order may give directions on matters consequential to such order which may seem just. The court has an inherent jurisdiction to extend the time fixed by it for the doing of an act;

(2) the appellants had not been completely deprived of their right to invoke O. LXII r. 5(2). There was no certainty that such application would be granted. The respondent's conduct was consistent with the fact that he was making every effort to comply with the order of 22nd November, 1968. It was right and proper that the extension of time be granted to him to furnish the security for costs.

FEDERAL COURT.

K.S. Chung for the appellants/defendants.

A.P. Godwin for the respondent/plaintiff.

Cur. Adv. Vult.

Chua J. (delivering the judgment of the court): The plaintiff resides in Belgium. By an order of court dated the 22nd November, 1968, (made by the learned Chief Justice), the plaintiff was required to give security for the defendants' costs in the sum of $1,000 to be paid into court within three weeks. On the 6th December, 1968, the matter was brought before the learned Chief Justice at the request of the solicitors for the plaintiff who were seeking an order that the security for costs ordered be furnished by way of guarantee. The learned Chief Justice was of the view that the manner in which it was sought to have the matter heard was misconceived as an application should have been made by summons. On the 13th December, 1968, the solicitors for the plaintiff took out a summons seeking an order that the security for costs ordered be furnished by way of guarantee. Before the summons was heard the defendants took out a summons on the 27th December, 1968, seeking an order that the action of the plaintiff be dismissed for want of prosecution pursuant to Order LXII rule 5(2) of the Rules of the Supreme Court, 1934. The plaintiff's summons was heard by the learned Chief Justice on the 7th January, 1969. The application of the plaintiff was refused but the plaintiff was granted one week within which to comply with the order of the 22nd November, 1968. The summons of the defendants was adjourned. It is against the order of the 7th January, 1969, granting the plaintiff a week to comply with the order of the 22nd November, 1968, that the defendants now appeal.

It is submitted on behalf of the defendants that the learned Chief Justice was wrong in granting the plaintiff an extension of one week when the plaintiff did not ask for it. We are unable to accept this submission. By Order LI rule 2(2) the learned Chief Justice upon hearing the application of the plaintiff "may make any order, and give any directions relative to, or consequential on, the matter of such application as are just." It cannot be argued that the order granting the plaintiff a week to comply with the order of the 22nd November, 1968, was not "consequential on the matter of such application." Furthermore, it is our view that where time is fixed by the court or a judge for doing some act, the court has inherent jurisdiction to extend the time.

It is further submitted that the learned Chief Justice was wrong in granting the extension as there was no ground advanced by the plaintiff for the extension and that there was no evidence to justify the extension. With this submission we also cannot agree. When the learned Chief Justice heard the plaintiff's application he had the file of the suit before him and consequently when he exercised his discretion he had all the facts before him. The facts are set out in the documents which are in part I of the record of appeal. In our view there was sufficient evidence on which the learned Chief Justice could exercise his discretion and grant the extension.

It is finally submitted that the learned Chief Justice wrongly exercised his discretion in that by granting the extension of time an

injustice has been caused to the defendants. It is argued that but for the extension of time the defendants would have been entitled to invoke Order LXII rule 5(2) which provides that "if a plaintiff makes default in giving security, his action may be dismissed." and that the effect of the order extending time was to deny the defendants the order they were seeking under Order LXII rule 5(2) without being heard and this amounted to an injustice to the defendants.

The main consideration in this appeal it appears to us is whether the decision of the learned Chief Justice would result in injustice being done to the defendants. It is clear that the right of the defendants to invoke Order LXII rule 5(2) has not been taken away completely. Even if the application of the defendants was heard on that day they might not have succeeded in getting the order that they were seeking. In our view no injustice has resulted to the defendants.

In our view, on the facts of the case, it was right and proper that the extension of time be granted to the plaintiff. There is no evidence to show that the plaintiff was not willing to comply with the order of the 22nd November, 1968. His whole conduct shows that he was making every effort to comply with it.

For these reasons we dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Chung & Co.; Donaldson & Burkinshaw.*

AW CHEN v. JOHANNES KOPLAN

[O.C.J. (Chang Min Tat J.) May 29, 1969]
[Ipoh — Civil Suit No. 323 of 1966]

Practice and Procedure — Service — Substituted service — Notice of writ for service outside jurisdiction — Principle governing order for substituted service — Defendant in foreign country but address unknown — Whether substituted service was proper.

The plaintiff failed to have a notice of writ of summons for service outside the jurisdiction served personally on the defendant at a specified Austrian address and renewed the writ on the ground that the writ could not be served because the defendant had left Austria, without leaving a forwarding address. The plaintiff subsequently applied for leave for substituted service on the same ground. Leave for substituted service was granted and the order was subsequently amended. The amended form of the order provided for substituted service by publishing the notice in a named Austrian newspaper, posting it in the High Court in Ipoh, and publishing it in *The Straits Times*. The order was carried out; an interlocutory judgment in default of appearance entered; and an application for a date for assessment of damages made.

The defendant's insurers now applied to set aside the service of the notice and all subsequent proceedings. It was contended in support of the application that the notice of the writ could not have been brought to the personal attention of the defendant in view of the admission in the plaintiff's affidavits that the defendant had left Austria. The plaintiff filed a further affidavit to the effect that the statement in the affidavits was inadvertently made in that what was all along intended was that the defendant had left the Austrian address and not Austria.

Held, dismissing the application: (1) the primary consideration which weighs with the court in determining whether or not to make an order for substituted service is as to how the matter can be brought to the personal attention of the person in question;

(2) in the circumstances of this case the substituted service was proper because there was no actual admission on the part of the plaintiff that the defendant had left Austria. Further although it was not known when the defendant had left the address given in the writ and subsequently Austria the evidence showed that the defendant was in Austria at the relevant time.

CIVIL APPEAL.

P.P. Dharmananda for the applicant/defendant.

Lal Harcharan Singh for the respondent/plaintiff.

Cur. Adv. Vult.

Chang Min Tat J.: This is an application made by the National Insurance Co. Ltd. in the name of the defendant, their insured, to set aside the service of the notice of the writ of summons and all subsequent proceedings, including an interlocutory judgment and an order for hearing to assess the damages in this running down case.

This case illustrates the difficulties encountered in initiating motions against drivers who could, I hope, without disrespect, be termed "birds of passage". The defendant in this case came to this country on a temporary contract of employement. The accident occurred during his stay here but when action was commenced, he had left the country. The solicitor for the plaintiff on enquiry from the then employers of the defendant discovered that the defendant had left this country on 24th August, 1965 and that his address in May, 1966 was at Lembach No. 86, Post Riegersburg, Steiermark, Austria, (hereinafter referred to as the address) and he had to obtain leave to issue the proposed writ of summons for service outside the jurisdiction and to serve a notice of the issue of the writ of summons on the defendant at the said address or elsewhere in Austria. Such leave was given to him on the 20th July, 1966, when it was ordered that the notice be sent for personal service on the defendant to the appropriate authority in Austria through the registrar of the High Court in Kuala Lumpur. On the 23rd December, 1966, the registrar returned the documents sent to him for service, unserved together with what was described by him as the summons issued by the district court of Feldbach,